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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
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93-253

November 9, 1993

Office of the Secretary
Room 222
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: FCC/Cellular System Lottery

Dear Commissioners:

I and other individuals who submitted applications for cellular system licenses were shocked and dismayed when the FCC announced that it would not follow through with the lottery that had been scheduled. I am writing to express my deepest disappointment that the FCC would strip me and my partners of the opportunity to participate in the scheduled lottery, especially since we invested over \$100,000 to develop and submit acceptable applications.

From what I have been able to discern, the Commission's consideration of an auction was prompted by its interpretation of the Omnibus Budget Reconciliation Act of 1993. While it is true that the Budget Act expresses a preference for auctions, it also makes very clear that Congress intended those situations where applications were received before July 26, 1993 to be treated differently from those situations where applications were received prior to that date. That distinction is specifically made in the Act and is echoed throughout the legislative history of the Act. See Budget Reconciliation Act, P.L. 103-66, § 6002, Special Rule (e); House Conf. Rep. No. 103-213, pp. 498-99; House Rep. No. 103-111, pp. 262-63. As you know, the applications for the lottery at issue were received well before July 26, 1993.

The distinction in the Budget Act between situations where applications already had been received and situations where they had not simply makes sense. Countless individuals and businesses expended tremendous amounts of

time, energy, and resources in reliance on the FCC's pronouncements that it would conduct a lottery. It is only equitable that we should not have these investments nullified by the deliberate conduct of government officials absent extraordinary circumstances demanding such severe consequences.

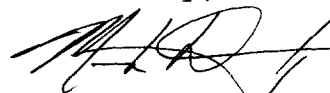
If an auction is conducted, I seriously doubt that my partnership, Chesapeake Cellular Partnership, will be able to participate. We simply do not have the resources to compete in a bidding contest against bigger, more powerful applicants. An auction by its nature is stacked against us and other small businesses and entrepreneurial individuals.

Although the Commission has indicated that it will try to assist smaller businesses and entrepreneurial individuals who have applied, the fact remains that the Commission will rely at least in part on how much an applicant bids in determining who should receive the licenses. Many of the applicants who already expended tens of thousands of dollars to participate in the lottery, however, do not have additional resources to commit to obtain a license. Only so many resources could be committed to obtaining a license while maintaining sufficient funds to build and operate the system. The additional cost of out-bidding other applicants is an unforeseen and, for some, including I fear my partnership, a prohibitive expense.

All we are asking is that the FCC follow through with the pronouncements it made that it would conduct a lottery. It is true that there always was a risk that we would not be selected as one of the lottery winners, but, absent extraordinary circumstances, neither we nor any other Americans should suffer the indignity of having our hard-earned resources stripped away by the deliberate conduct of our government officials. The FCC said it was going to conduct the lottery, we relied upon those representations, we complied with the rules in order to participate in the lottery, and we committed our energy and resources. For the FCC now to crush all of our efforts is no less than shameful.

I urge the Commission to follow through under the original, announced lottery procedures.

Sincerely,

A handwritten signature in dark ink, appearing to read 'M. H. Duesenberg', with a stylized, overlapping flourish at the end.

Mark H. Duesenberg